

THE NATURE OF A UNIFIED MUNICIPALITY IN ALASKA

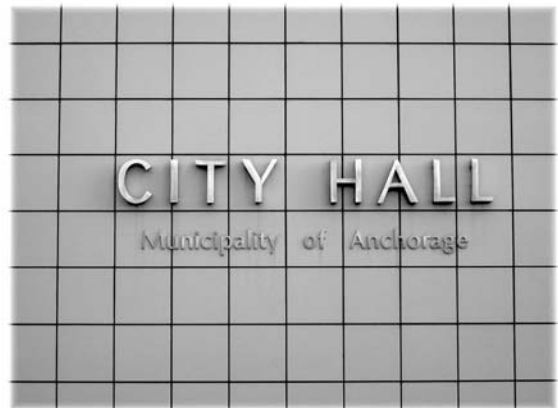
By Local Boundary Commission Staff
Alaska Department of Community and Economic Development
March 2004

Section I. Introduction.

The precise nature of a unified municipality is probably immaterial to most Alaskans. However, a clear understanding of the matter is crucial to statewide public policy makers and local citizens involved in the formation of municipal governments in Alaska.

The technical character of a unified municipality is often misconstrued. It is frequently portrayed as a city government. Evidence abounds of everyday references to unified municipalities in Alaska as city governments, as is reflected in the following examples.

- The Municipality of Anchorage – the most populous unified municipality and one of the most sophisticated local governments in Alaska – designates the building housing its administrative headquarters as “City Hall.”
- The Sitka Economic Development Association, Inc., proclaims that “Sitka is the largest city in the nation in land mass.”¹
- The Nevada State Library and Archives reports it is a myth that Carson City is the largest city government in the nation because, “Today, Juneau is the largest city ... Its political boundaries include 2,717 sq. miles.”²
- News media regularly refer to the three unified municipal governments in Alaska – the City and Borough of Juneau, City and Borough of Sitka, and Municipality of Anchorage – as city governments.



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<http://216.239.53.100/search?q=cache:bvKyR0Kds54C:www.sitka.net/quality.shtml+sitka+economic+land+mass+largest+city+development&hl=en&ie=UTF-8>

²<http://dmla.clan.lib.nv.us/docs/nsla/archives/myth/myth27.htm>

- An Internet search for the term “City of Anchorage” yielded over 3,300 (mostly contemporary) references. Searches for the terms “City of Juneau” and “City of Sitka” produced, respectively, 2,310 and 465 references.³
- Telephone directories list offices for the Municipality of Anchorage under the classification “Cities & Municipalities” or “Municipality” along with entities such as the City of Anderson, City of Wasilla, and City of Palmer. In contrast, the Matanuska-Susitna Borough and the Denali Borough are listed under the independent classification “Borough Offices” or under separate headings for each of those boroughs.⁴

A unified municipality is also often characterized as a “combined city-borough” unit of government – a hybrid distinct from other local government units in Alaska. The following examples reflect that perception:

- A personnel recruiting bulletin for the City and Borough of Juneau refers to Juneau’s municipal government as, “a unified (combined city and borough) municipality.”⁵
- A “monograph” dealing with public health indicates that Anchorage “has a combined city-borough form of government known as the Municipality of Anchorage.”⁶
- Some media accounts refer to the City and Borough of Juneau as a “combined city and borough.”⁷

Neither of the two common perceptions about the nature of a unified municipality is correct. That is, a unified municipality is neither a city government nor a combined city-borough government for reasons outlined in Sections II – IV of this paper.

Section II explains why a unified municipality is not a city government. Specifically:

- ✓ Section II-A summarizes the framework of local government in Alaska, noting that only two local government units – cities and boroughs – are allowed in Alaska.

³<http://www.google.com>

⁴*MTA 2002 Telephone Directory*, pp. 76-77; *ACS Yellow Pages – 2002/2003*, p. 36.

⁵<<http://www.watersconsulting.com/download/Juneau%20Profile.pdf>>

⁶<http://www.nida.nih.gov/pdf/Monographs/Monograph168/175-195_Fisher.pdf>

⁷http://www.juneauempire.com/stories/100901/Loc_developmentdir.shtml

- ✓ Section II-B demonstrates that the fundamental distinction between city governments and borough governments in Alaska is the size and nature of their jurisdictional territories.
- ✓ Section II-C indicates that a unified municipality must have the characteristics of a regional government, traits that are prohibited for city governments.
- ✓ Section II-D notes that the governing body of a city in Alaska is a council, but that the governing body of a unified municipality is an assembly.
- ✓ Section II-E explains that viewing a unified municipality as a city government conflicts with constitutional principles regarding the relationship between boroughs and cities.

Section III of this paper explains why a unified municipality cannot be a joint city-borough government. Specifically:

- ✓ Section III-A acknowledges that many provisions in Alaska Statutes seem to imply that a unified municipality is a local government unit distinct from a city or borough. However, such a construction conflicts with the constitution.
- ✓ Section III-B notes that existing city governments are extinguished as a result of unification. If extinguished, it no longer exists.
- ✓ Section III-C notes that there are a variety of ways other than unification to join city and borough governments. It concludes that it is no more legitimate to characterize unified municipalities as “combined city-borough governments” than it is to characterize any borough without city governments as such.

Section IV of this paper explains that a unified municipality is a particular type of organized borough. Given the findings in Sections II and III, that conclusion is the only one possible under Alaska’s constitutional framework for local government.

Section II. A Unified Municipality is not a City Government.

A. Alaska’s constitution allows only two local government units – cities and organized boroughs.

The opening section of the local government article of Alaska’s constitution reflects the intention of the constitutional convention delegates to avoid the expansive number of local government units typically found in other states. Specifically, Article X, Section 1 of the constitution states (emphasis added):

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent du

plication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Implementing the principle of a minimum of local government units, Section 2 of Article X provides that:

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

The Alaska Supreme Court, in *State v. Alex*, 646 P.2d 203, (Alaska 1982), addressed the constitutional principles regarding local government units in Article X, Sections 1 and 2.

The framers of the Alaska Constitution were aware of and were determined to avoid the proliferation of special districts with taxing powers that had occurred in other states. Thus, article X, section 1 provides in relevant part:



The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.

Section 2 of the same article states:

All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Examination of the convention proceedings shows the delegates' determination to ensure centralized planning and coordination of government functions by limiting the taxing power to governmental units with broad rather than specialized concerns. See 4 Alaska Const. Conv. Proceed. 2611-7, 2701-3. See *also* Alaska Statehood Commission, Constitutional Studies, *supra*, pt. VIII, 3-8, 18-24, 51-64.^[8]

⁸ "One of the convention delegates expressed this sentiment as follows:

I think the purpose of this article is to simplify our governmental procedure and also to prevent an overlapping of government functions. Now, we have two governmental functions set up here, the cities and the boroughs. I think that is plenty. They can provide for everything including the schools. So now, if the camel gets

(continued . . .)

The report made by the convention delegates to the voters also expresses this sentiment. It states:

The convention sought to provide for a simple, flexible system of local government adapted to the needs of the people of Alaska. It was determined to guard against the creation of unnecessary local units and taxing authorities or the establishment of anything like the typical county with its tight unchangeable boundaries, its heavy overhead of elected officials, and independent boards, and its inadequate powers and finances.

There will be just two classes of local governments: boroughs and cities.

Proposed Constitution for the State of Alaska: A Report to the People of Alaska from the Alaska Constitutional Convention 3.

B. A city government is subject to the “limitation of community” doctrine.

Cities and boroughs in Alaska are identical in many fundamental respects. Both are municipal corporations and political subdivisions of the State of Alaska (AS 29.04.010 – 29.04.020). Moreover, both enjoy broad powers. In fact, the powers and duties of home-rule and first-class cities in the unorganized borough are comparable in fundamental respects to the powers and duties of organized boroughs.

For example, AS 29.35.150 – 29.35.180 imposes three mandatory areawide responsibilities on boroughs – education, assessment and collection of taxes, and land-use regulation. In comparison, home-rule and first-class cities in the unorganized borough have a duty under AS 29.35.260(b) to “establish, operate, and maintain a system of public schools as provided by AS 29.35.160 for boroughs.” Further, AS 29.35.260(c) stipulates that a “first class city outside a borough shall . . . provide for planning, platting, and land use regulation as provided by AS 29.35.180(a) for first and second class boroughs.” The same law provides that a “home rule city outside a borough shall provide for planning, platting, and land use regulations as provided by AS 29.35.180(b) for home rule boroughs.” Additionally, AS 29.45.550 provides that home-rule and first-class cities in the unorganized borough may assess, levy, and collect a

(. . . continued)

his head is [sic] the tent . . . he probably will be all in the tent, bringing with him the amendments that established public utility districts, health districts, public improvement districts, and we will be right back to our old method of numerous taxing bodies which we want to get away from.

4 Alaska Const. Conv. Proceed. 2699-700."

property tax in the manner provided by law for boroughs. AS 29.45.700(c) authorizes cities in the unorganized borough to “levy and collect sales and use taxes in the manner provided for boroughs.”

Beyond the functions mandated by State law, both organized boroughs and cities have broad discretionary powers. A home-rule borough or city may, of course, exercise any power not prohibited by law or charter (Article X, Section 11, Ak Const; AS 29.04.010). General-law boroughs and cities have powers conferred by law (AS 29.04.020). The powers of general-law governments are also very broad (Article X, Section 1, Ak Const; AS 29.35.400 – 29.35.420). AS 29.35.200(a) provides, for example, that a “first class borough may exercise by ordinance on a nonareawide basis any power not otherwise prohibited by law.” Similar language exists with respect to the powers of cities in the unorganized borough. Specifically, AS 29.35.260(a) provides that “[a] city outside a borough may exercise a power not otherwise prohibited by law.”

However, boroughs and cities are distinct from one another with respect to form – specifically in terms of the size and nature of their respective jurisdictional territories. A borough government is intended to encompass a large, natural region. In clear contrast, the jurisdictional boundaries of a city are limited to a community.⁹

The limitations of the size and nature of jurisdictional territories of city governments are reflected in the “limitation of community” doctrine addressed by the Alaska Supreme Court in *Mobil Oil Corporation v Local Boundary Commission*, 518 P.2d 92 (Alaska 1974).¹⁰

⁹Additional fundamental details concerning the regional nature of borough governments are provided in *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*, Local Boundary Commission (February 2003), pp. 35 – 49.

¹⁰In the *Mobil Oil* case, the Court addressed the limitation of communities doctrine by making a distinction between boroughs and what it termed “municipalities” (e.g., “boroughs are not restricted to the form and function of municipalities”). While today, both cities and boroughs are both recognized as municipalities, it is evident that the 1974 Court was referring only to “cities” (or derivatives thereof such as “city”, or “city government”) when it used the term “municipalities,” (or derivatives thereof such as “municipality,” or “municipal”). *The Law of Municipal Corporations* by Eugene McQuillin notes that, generally, the terms “municipality” and “municipal corporation” are used synonymously (*McQuillin Mun Corp* § 2.20 (3rd Ed)) and that “generally the words ‘municipal corporation’, as used in the constitution of a state, apply only to incorporated cities, town or villages ...” (*Id.* at § 2.07a).

Moreover, it is significant that when the North Slope Borough incorporation petition was filed, statutory standards and procedures for borough incorporation as well as other laws concerning boroughs were codified in “Alaska Statutes – Title 7 – Boroughs.” In contrast, statutes relating to cities were codified in “Alaska Statutes – Title 29 – Municipal Corporations.” The Court made reference to borough standards and other provisions in Title 7 seventeen times in the *Mobil Oil* case. In 1972, Titles 7 and 29 of the Alaska Statutes were repealed and new laws concerning both cities and boroughs were enacted as “Alaska Statutes – Title 29 – Municipal Government”. The distinction in the terms used by the Court in *Mobil Oil* to describe the two types of governments (i.e., “boroughs” and “municipalities”) was purely nominal. However, the distinction made by the Court as to the form of the two types of governments (boroughs and cities) was significant.

[Appellants] offer a series of cases striking down municipal annexations and incorporations where the lands taken have been found to receive no benefit^[11]. We find this authority unpersuasive when applied to borough incorporation. In most of these cases, the courts inferred from statutes or state constitutions what has been called a 'limitation of community'^[12] which requires that the area taken into a municipality be urban or semi-urban in character.

There must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty. . .^[13]

The limitation has been found implicit in words like 'city' or 'town' in statutes and constitutions^[14] or inferred from a general public policy of encouraging mining or agriculture.^[15] In other cases, the limitation has been expressed as a finding that the land taken is not susceptible to urban municipal uses.^[16] The result in these cases was determined not by a test of due process but by restrictions in pertinent statutes and constitutions on the reach of municipal annexations and incorporations.

Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. art. X, § 1. And

¹¹ "The property owners rely principally upon *United States v. City of Bellevue, Nebraska*, 474 F.2d 473 (8th Cir. 1973); *State ex rel. Attorney General v. City of Avon Park*, 108 Fla. 641, 149 So. 409 (1933); *State ex rel. Davis v. City of Stuart*, 97 Fla. 69, 120 So. 335 (1929); *City of Aurora v. Bryant*, 240 Ind. 492, 165 N.E.2d 141 (1960); *State v. Village of Leetonia*, 210 Minn. 404, 298 N.W. 717 (1941); *Portland General Electric Co. v. City of Estacada*, 194 Or. 145, 241 P.2d 1129 (1952)."

¹² "1 C. Antieau, *Municipal Corporation Law* § 1.04 (1973)."

¹³ "State ex rel. Davis v. Town of Lake Placid, 109 Fla. 419, 147 So. 468, 471 (1933)."

¹⁴ "E.g., *Town of Satellite Beach v. State*, 122 So.2d 39 (Fla.App.1960); *State v. Town of Boynton Beach*, 129 Fla. 528, 177 So. 327 (1937); *State ex rel. Davis v. City of Largo*, 110 Fla. 21, 149 So. 420 (1933); *State ex rel. Attorney General v. City of Avon Park*, 108 Fla. 641, 149 So. 409 (1933); *State ex rel. Davis v. City of Stuart*, 97 Fla. 69, 120 So. 335 (1929); *Chesapeake and O. Ry. v. City of Silver Grove*, 249 S.W.2d 520 (Ky. 1952); *Portland General Electric Co. v. City of Estacada*, 194 Or. 145, 241 P.2d 1129 (1952)."

¹⁵ "E.g., *State ex rel. Bibb v. City of Reno*, 64 Nev. 127, 178 P.2d 366 (1947)."

¹⁶ "E.g., *City of Sugar Creek v. Standard Oil Co.*, 163 F.2d 320 (8th Cir. 1947); *Waldrop v. Kansas City Southern Ry. Co.*, 131 Ark. 453, 199 S.W. 369 (1917); *City of Aurora v. Bryant*, 240 Ind. 492, 165 N.E.2d 141 (1960); *State v. Village of Leetonia*, 210 Minn. 404, 298 N.W. 717 (1941)."

boroughs are not restricted to the form and function of municipalities. They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use.^[17]

The limitation of community doctrine is implicit in the AS 29.05.011 – 29.05.021 concerning standards for and limitations on incorporation of cities.¹⁸

AS 29.05.011. Incorporation of a city. (a) A community that meets the following standards may incorporate as a first class or home rule city:

- (1) the community has 400 or more permanent residents;
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;
- (3) the economy of the community includes the human and financial resources necessary to provide municipal services; in considering the economy of the community, the Local Boundary Commission shall consider property values, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;
- (4) the population of the community is stable enough to support city government;
- (5) there is a demonstrated need for city government.

(b) A community that meets all the standards under (a) of this section except (a)(1) may incorporate as a second class city.

Moreover, the limitation of community doctrine is explicit in Alaska Administrative Code provisions dealing with city incorporation. Specifically 3 AAC 110.040(b) – (c) provides as follows:

(b) The boundaries of the proposed city must include only that territory comprising a present local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of incorporation.

¹⁷ "25 See note 14, *supra*."

¹⁸The term "community" used in the context of city incorporation and annexation is defined by 3 AAC 110.990(5). The existence and extent of a community is determined under the provisions of 3 AAC 110.920.

(c) The boundaries of the proposed city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.005 - 3 AAC 110.042 (emphasis added).

Similar limitations exist concerning city annexations. Specifically, 3 AAC 110.130(c) – (d) provides as follows:

(c) The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation.

(d) The proposed boundaries of the city may not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 – 3 AAC 110.135.

C. A unified municipality is not subject to the limitation of community doctrine; it must have regional characteristics.

State law provides that a unified municipality may be formed in one of two ways. AS 29.06.190(a) states that an existing borough and all existing cities within that borough may unite to form a single unit of home rule government under AS 29.06.190 – 29.06.410. Alternatively, AS 29.06.190(b) provides that a region in the unorganized borough, including any cities in that region, may incorporate as a unified municipality under AS 29.05.031.

In either case, the unified municipality must possess the characteristics of a regional government (organized borough). If an existing organized borough and cities unite under AS 29.06.190 – 29.06.410, the unified municipality succeeds to the corporate boundaries of the former borough. In doing so, it takes on characteristics that are prohibited for cities under the limitation of community doctrine. Among municipal governments in Alaska, those characteristics are unique to boroughs.

Under the second option, a unified municipality is formed from an unorganized region of Alaska. In that case, AS 29.05.031 expressly provides that it must meet the standards for a borough government. Moreover, the Local Boundary Commission's regulations require that it also meet the Alaska Administrative Code standards for incorporation of a borough under 3 AAC 110.045 – 3 AAC 110.065.

D. The governing body of a city is the council; the government body of a unified municipality is an assembly.

Alaska's constitution and statutes stipulate that the governing body of a city is the "council" (Art. X, Sec. 8; Ak Const.; AS 29.71.800(7)). In contrast, the constitution and

statutes stipulate that the governing body of a borough is the “assembly” (Art. X, Sec. 4; Ak Const.; AS 29.71.800(2)).

State statutes do not refer to a council as the governing body of a unified municipality. However, at least implicitly, statutes refer to an assembly as the governing body of a unified municipality. Specifically, AS 29.20.060 – 29.20.110 deal with assembly composition, and apportionment. AS 29.20.060 applies to all home-rule and general-law boroughs. However, all unified municipalities and those home-rule boroughs whose charters contain procedures for changing assembly composition and form of representation are expressly exempt from AS 29.20.070 – 29.20.110. By explicitly exempting unified municipalities (and certain other home-rule boroughs) from certain statutory provisions relating to assembly composition and apportionment, it is reasonably implied that the provisions of AS 29.20.070 – 29.20.110 would otherwise apply to them.

It is also noteworthy that all three existing unified municipalities in Alaska – City and Borough of Juneau, City and Borough of Sitka, and Municipality of Anchorage – are governed by assemblies.

E. The notion of a unified municipality as a city conflicts with the constitutional relationship between boroughs and cities.

Article X, Section 3 of Alaska’s constitution provides that all of Alaska must be divided into boroughs, organized or unorganized.¹⁹ Article X, Section 7 provides that city governments must be part of the borough in which the city governments are located. Specifically, Section 7 states:

Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law (emphasis added).

If a unified municipality is a city, under Article X, Section 7 it must be part of the borough in which it is located. Since a unified municipality is a single government entity, by definition, all unified municipalities must be within unorganized boroughs.²⁰ However, constitutional convention delegates envisioned that unorganized boroughs would exist only where regions lacked the administrative and fiscal capacity to provide areawide serv

¹⁹See *Unorganized Areas of Alaska that Meet Borough Incorporation Standards*, pages 3 – 5 and 18 – 20, for background information about the constitutional provisions relating to the division of Alaska into organized and unorganized boroughs.

²⁰AS 29.03.010 provides that “Areas of the state that are not within the boundaries of an organized borough constitute a single unorganized borough.”

ices.²¹ Clearly, this is not the case for the existing unified municipalities which are among the most sophisticated local governments in Alaska.

Additionally, it is noted that territory within a city government may be annexed to an organized borough. When this occurs, the city government serving that territory continues to exist as a municipal corporation within the annexing organized borough. However, if a unified municipality were annexed to an (other) organized borough, one of the two local governments would be consequently dissolved.

Alaska's constitution encourages the creation of organized boroughs. Mobil Oil, *supra*, p 101. If unified municipalities are city governments, their creation under AS 29.06.190 - 29.06.410 results in the dissolution of organized boroughs – a step backward in terms of the constitutional scheme of local government in Alaska.

Section III. A Unified Municipality is not a Joint City-Borough Unit of Local Government.

A. Alaska Statutes seem to imply that unified municipalities are a local government unit distinct from a city or borough; however, again, the constitution permits only two local government units.

Certain statutory provisions lend the impression that a unified municipality is a unit of local government distinct from either a city or a borough. Examples include the following definitions (emphasis added):

AS 01.10.060. Definitions. (a) In the laws of the state, unless the context otherwise requires, . . .

(4) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

AS 19.30.241. Definitions. In AS 19.30.111 – 19.30.241

. . .

(5) "local government" means an organized borough of any class, a unified municipality, or a city of any class;



²¹*Id.* at 3.

AS 29.04.010. Home rule. A home rule municipality is a municipal corporation and political subdivision. It is a city or a borough that has adopted a home rule charter, or it is a unified municipality. . . .

AS 29.71.800. Definitions. In this title, unless otherwise provided or the context otherwise requires . . .

(13) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality; . . .

Statutory provisions suggesting that a unified municipality is a unit of government other than a city or borough are not limited to definitions reflected in the examples above. For instance, AS 29.45.010 provides as follows:

AS 29.45.010. Property tax. (a) A unified municipality may levy a property tax. A borough may levy

(1) an areawide property tax for areawide functions;

(2) a nonareawide property tax for functions limited to the area outside cities;

(3) a property tax in a service area for functions limited to the service area.

(b) A home rule or first class city may levy a property tax subject to AS 29.45.550 – 29.45.560. A second class city may levy a property tax subject to AS 29.45.590.

(c) If a tax is levied on real property or on personal property, the tax must be assessed, levied, and collected as provided in this chapter (emphasis added).

The statutory definition of a "unified municipality" set out in AS 29.71.800(24) does nothing to clarify its precise nature. It states simply that "'unified municipality' means a municipality unified in accordance with AS 29.06.190 – 29.06.410." The statutory definition is even incomplete in that it does not include unified municipalities incorporated under AS 29.05.031.

Notwithstanding the statutory provisions noted here, it is clear, from the discussion in Section II-A of this paper that only two local government units are permitted under the constitution and that the State may delegate its taxing power only to those two units.

Those points cannot be disputed from the plain language of Article X, Section 2. Such is also clearly reflected in the Supreme Court's decision in *State v. Alex*.

In other words, the constitution does not permit boroughs, cities and "borough-cities" nor does it allow boroughs, cities, and "unified municipalities" as separate local government units. Statutory law cannot create a new unit of local government that is restricted by Alaska's constitution.

B. Existing city governments are dissolved upon unification.

When a unified municipality is formed under AS 29.06.190 – 29.06.410 from an existing borough and cities, all existing local governments in that area are dissolved (AS 29.06.370). A new single unit of home-rule government is then formed (AS 29.06.190(a)).

Similarly, when a unified municipality is incorporated under AS 29.05.031, all existing local governments in the area are dissolved (AS 29.05.140(d)). Again, a new single unit of home-rule government is then formed (AS 29.05.110(d)).

In either case, all city governments in the unified municipality are extinguished. What is created in place is a single municipal government that encompasses a large geographic region characteristic of a borough government. As noted in Sections II-A and II-C of this paper, the new single unit of home-rule government must exhibit characteristics that exceed the limitations of city governments. It exhibits no characteristics that are unique to a city government.

C. Local governments may be joined together in a number of different ways.

City governments and borough governments may be combined in a variety of ways. In addition to unification under AS 29.06.190 – 29.06.410, the options include:

- ✓ merger under AS 29.06.090 – 29.06.170,
- ✓ consolidation under AS 29.06.090 – 29.06.170,
- ✓ dissolution of cities within a borough under AS 29.06.460 – 29.06.510, and
- ✓ dissolution of cities following assumption of powers by a borough under AS 29.06.450(c).

Two of Alaska's boroughs have combined city and borough governments by ways other than unification. In 1992, the City and Borough of Yakutat was incorporated. Concurrent with its incorporation, the City of Yakutat was dissolved under AS 29.06.450(c) since the new borough assumed, on an areawide basis, all powers of the City of Yakutat.

In October 2002, the City of Haines (a first-class city) and the Haines Borough (a third-class borough) consolidated under AS 29.06.090 – 29.06.170. Therefore, both municipalities were dissolved, and a new single unit of local government was created – the home-rule Haines Borough.

The City and Borough of Yakutat and the Haines Borough exhibit fundamental characteristics identical to those of unified municipalities. All are home-rule boroughs, and none have city governments within their boundaries. One significant distinction between the unified municipalities and the other two boroughs does exist. That particular characteristic is addressed in Section IV of this paper.

One other borough in Alaska has no city governments within it. The Bristol Bay Borough, a second-class borough, was incorporated in 1962. There has never been an incorporated city government within that borough.

There is no greater foundation to assert that a unified municipality is a “combined city-borough” government than there is to characterize the newly consolidated Haines Borough or the City and Borough of Yakutat as such.

The same can be said with regard to the second-class Bristol Bay Borough. As noted earlier, an unorganized region without any city government (e.g., Copper River Basin Model Borough) may incorporate a unified municipality under AS 29.05.031. On that basis, it is no more legitimate to characterize a unified municipality as a “joint city-borough” than it is to characterize the Bristol Bay Borough as such.

Section IV. A Unified Municipality is a Particular Kind of Organized Borough.

Sir Arthur Conan Doyle wrote that, “When you have eliminated the impossible, whatever remains, however improbable, must be the truth.”

From the discussion in Sections II and III of this paper, it is evident that municipal governments in Alaska must be either a city or a borough. Clearly, no other units of local government are permitted under the constitution. It is further evident that a unified municipality is not a city. Therefore, a unified municipality must be a borough – a truth that is not at all improbable.

As noted under Section II-C, all unified municipalities implicitly meet the standards for borough incorporation if formed under AS 29.06.190 – 29.06.410 or are expressly required to meet those standards at the time of incorporation under AS 29.05.031.

A unified municipality is a distinct type of organized borough. It is a home-rule borough in which no city government is permitted to exist. The prohibition on the incorporation of city governments within a unified municipality is what distinguishes a unified municipality from all other home-rule boroughs such as the Haines Borough and the City and Bor

ough of Yakutat. It is technically possible to form city governments within the Haines Borough and the City and Borough of Yakutat.

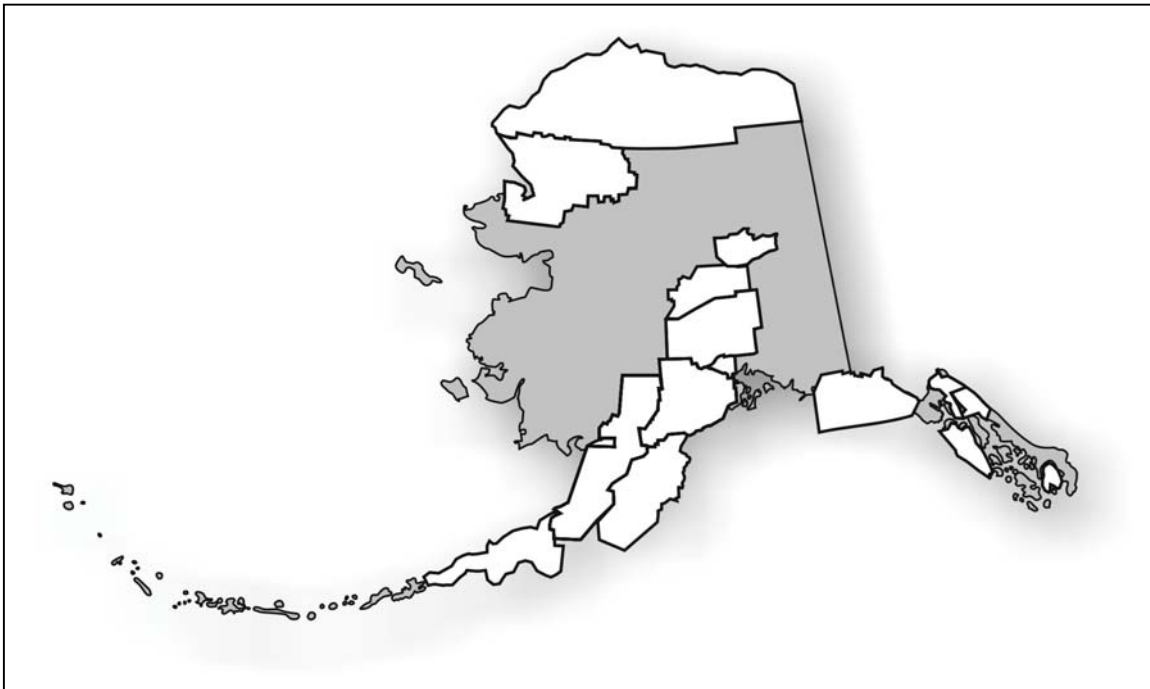
For the reasons outlined herein, the Local Boundary Commission has defined the word “borough” to include a unified municipality. Specifically, 3 AAC 110.990(1) provides as follows:

3 AAC 110.990. Definitions

Unless the context indicates otherwise, in this chapter

(1) "borough" means a general law borough, a home rule borough, or a unified municipality (emphasis added);

The following lists the types of organized boroughs permitted under Alaska law. Included are the number of each type of borough that currently exists and the number of city governments within each borough.



Unified home-rule boroughs (unified municipalities)

- ◆ Municipality of Anchorage (encompasses no city governments);
- ◆ City and Borough of Juneau (encompasses no city governments);
- ◆ City and Borough of Sitka (encompasses no city governments).

Non-unified home-rule boroughs

- Denali Borough (encompasses one city government);
- Haines Borough (encompasses no city governments);
- City and Borough of Yakutat (encompasses no city governments);
- Lake and Peninsula Borough (encompasses six city governments);
- North Slope Borough (encompasses seven city governments);
- Northwest Arctic Borough (encompasses ten city governments).

First-class borough

- None currently exist.

Second-class borough

- ◆ Aleutians East Borough (encompasses five city governments);
- ◆ Bristol Bay Borough (encompasses no city governments);
- ◆ Fairbanks North Star Borough (encompasses two city governments);
- ◆ Ketchikan Gateway Borough (encompasses two city governments);
- ◆ Kodiak Island Borough (encompasses six city governments);
- ◆ Kenai Peninsula Borough (encompasses six city governments);
- ◆ Matanuska-Susitna Borough (encompasses three city governments).